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OFFICE OF PETITIONS

In re :
Chun-Geun Choi : ON PETITION
Reissue Application No. 10/067,758 :
Filed: February 8, 2002 :
Atty Docket No. P54562RE :
:

This is in response to the "PETITION UNDER 37 C.F.R. §1.47(a) and (b), §1.181 AND §1.183," filed August 8, 2007. This petition is properly treated pursuant to 37 CFR 1.183¹. The \$400 petition fee has been charged to petitioner's Deposit Account, as authorized.

Petitioner requests waiver of the rule (presumably §1.172) that requires that the inventor sign any supplemental declaration in a broadening reissue application.

37 CFR § 1.172 requires that a reissue declaration be made by the inventors, except as otherwise provided (§§ 1.42, 1.43, 1.47), where the scope of the claims of the original patent is being enlarged.

¹ Petitions under 37 CFR 1.47 are only applicable to an original oath or declaration and are not applicable to the reexecution of another oath or declaration by A. In such circumstances, a petition under 37 CFR 1.183 should be considered requesting waiver of the requirement of 37 CFR 1.64 that each of the actual inventors, i.e., inventor A, execute the oath or declaration, particularly where assignee consent is given to the requested correction. See MPEP 201.03.

The above-identified reissue application of patent No. 6,025,823 (Issued February 15, 2000) was filed on February 8, 2002, with a reissue application declaration executed by the sole inventor. A supplemental declaration pursuant to 37 CFR 1.175(a)(1) was required by the examiner in the Office action of May 14, 2007. The reissue oath/declaration filed with the application was defective because it failed to identify at least one error which was relied upon to support the reissue application.

In response, applicant timely filed 1) a response to the Office action, 2) a supplemental reissue application declaration including a 3.73(b) statement and a written consent of assignee, and 3) the instant petition (and fee) to accept the declaration signed by Kabtae Han, as representative of the assignee on behalf of the non-signing sole inventor. The petition also includes a statement of facts to show that diligent efforts were made to reach or find inventor Choi to have him sign the supplemental reissue declaration; (2) a statement of the last known address of the non-signing inventor; (3) evidence that the invention has been assigned to the assignee submitting the supplemental reissue declaration and (4) a statement that the filing of the application is necessary to prevent irreparable damage.

35 U.S.C. 251, which is directed to reissue, does not address the signature requirements of a declaration in reissue. 37 CFR 1.172 requires that a reissue declaration be made (and signed) by the inventors, except as otherwise provided (§§ 1.42, 1.43, 1.47), where the scope of the claims of the original patent is being enlarged. 37 CFR § 1.175(b)(1), requires that:

"For any error corrected, which is not covered by the oath or declaration submitted under paragraph (a) of this section, applicant must submit a supplemental oath or declaration stating that every such error arose without any deceptive intention on the part of the applicant."

37 CFR 1.175(b)(1), taken in conjunction with § 1.172, requires a supplemental declaration to be signed by all of the inventors. This is because all oaths or declarations necessary to fulfill the rule requirements in a reissue application are taken together collectively as a single oath or declaration. Thus, each oath and/or declaration must bear the appropriate signature of the inventors.

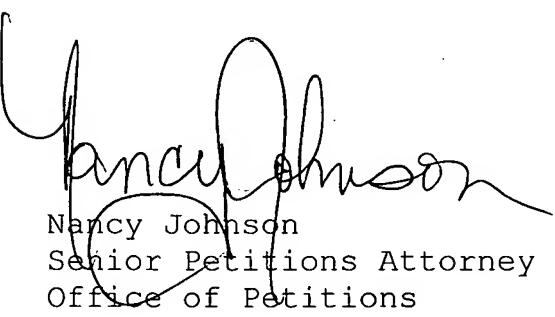
37 CFR 1.183 permits, in an extraordinary situation, waiver of a rule which is not a requirement of the statute, where justice requires such waiver, and applicant has requested a waiver of the requirement that the 37 CFR 1.175(b)(1) supplemental declaration be signed by the inventor.

The instant petition is accompanied by an appropriate showing that inventor Choi is unavailable to join in the supplemental reissue application declaration. A written consent of assignee and a 3.73(b) statement are of record. The showing as to extraordinary circumstances is complete, 37 CFR § 1.183 can be invoked in order to waive § 1.175.

Accordingly, this petition under 37 CFR 1.183 is granted to waive the rules. The provisions of 37 CFR 1.175(b)(1), and 37 CFR 1.172 are hereby waived to the extent that the August 8, 2007 supplemental reissue application declaration submitted with the present petition will be accepted as though it was signed by the inventor.

The application is being forwarded to Technology Center 2816 for further action by the examiner, including consideration of the response to the non-final Office action of May 14, 2007 filed August 8, 2007.

Please direct any questions related to this decision to the undersigned at (571) 272-3219.


Nancy Johnson
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Office of Petitions